

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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BILL DRAFT 2011-RBz-18 [v.9] (03/31)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

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Short Title: Expedited Rule-Making for Forced Combination.

(Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED  
AN ACT TO REQUIRE THE SECRETARY OF REVENUE'S INTERPRETATION OF THE  
LAW CONCERNING THE SECRETARY'S AUTHORITY TO ADJUST NET INCOME  
OR REQUIRE A COMBINED RETURN BE MADE THROUGH RULE-MAKING AND  
TO PROVIDE AN EXPEDITED PROCESS FOR RULE-MAKING ON THIS ISSUE.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 105-262(b) is repealed.

**SECTION 2.** Article 9 of Chapter 105 of the General Statutes is amended by adding a new section to read:

**"§ G.S. 105-262A. Rules to exercise authority under G.S. 105-130.5A.**

**(a) Purpose and Scope. – It is the policy of the State to provide necessary guidance on a timely basis to corporate taxpayers subject under G.S. 105-130.5A to have their net income adjusted or to be required to file a combined return. The Secretary may not redetermine the State net income of a corporation properly attributable to its business carried on in the State under G.S. 105-130.5A until the Secretary has adopted rules in accordance with this section. This section provides an expedited procedure for the adoption of rules needed to administer G.S. 105-130.5A. The Secretary may not interpret G.S. 105-130.5A in the form of a bulletin or directive under G.S. 105-264.**

**The Secretary is exempt from G.S. 150B-21.1 through G.S. 150B-21.4 of Part 2 of Article 2A of Chapter 150B of the General Statutes but is subject to the expedited procedure for the adoption of rules as established by this section. The Secretary is exempt from Part 3 of Article 2A of Chapter 150B of the General Statutes but is subject to the expedited review procedure as established by this section.**

**Rules adopted under this section apply to taxable years beginning on or after January 1, 2012. Failure to adopt a rule before the end of a taxable year beginning on or after January 1, 2012, does not affect the validity of a proposed denial of a refund or proposed assessment resulting from the redetermination of State net taxable income of a corporation properly attributable to its business carried on in the State under G.S. 105-130.5A.**

**(b) Definition. – The definitions in G.S. 150B-2 apply in this section.**

**(c) Fiscal Note. – The Secretary must prepare a fiscal note for a proposed new rule or a proposed change to a rule that has a substantial economic impact. The fiscal note must be submitted with the proposed rule when the rule is submitted to the Codifier of Rules and the Codifier of Rules must publish the fiscal note with the proposed rule on the Internet. The**



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Secretary is not subject to the fiscal note requirement under G.S. 105-262(c). For purposes of this section, a "substantial economic impact" has the same meaning as defined in G.S. 150B-21.4(b1).

(d) Adoption. – The Secretary may adopt a rule under this section by using the procedure for adoption of a temporary rule set forth in G.S. 150B-21.1(a3). If the Secretary receives written comment objecting to the rule, the rule must be reviewed in accordance with subsections (e) through (i) of this section. If the Secretary receives no written comment objecting to the rule, the Secretary must deliver the rule to the Codifier of Rules. The Codifier of Rules must enter the rule into the North Carolina Administrative Code upon receipt of the rule.

(e) Review. – If the Secretary receives written comment objecting to the rule, the Secretary must submit the rule to the Commission for review. The Commission may not consider questions relating to the quality or efficacy of the rule but must restrict its review to a determination of whether the rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission must consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with this section.

(f) Manner of Review. – When the Commission reviews a rule under this section, the time limits in subsections (b) and (b1) of G.S. 150B-21.1 apply. The Commission must review the rule to determine whether the rule meets the standards in subsection (e) of this section. The Commission must direct a member of its staff who is an attorney licensed to practice law in North Carolina to review the rule. The staff member must make a recommendation to the Commission or its designee. The Commission's designee must be a panel of at least three members of the Commission. The staff member, Commission's designee, or the Commission may also request technical changes as allowed in G.S. 150B-21.10. In reviewing the rule, the Commission may consider any information submitted by the Secretary or another person.

(g) Objection. – If the Commission or its designee finds that the rule does not meet the standards in subsection (e) of this section and objects to the rule, the Commission or its designee must send the Secretary a written statement of the objection and the reason for the objection within one business day. The Secretary must take one of the following actions:

- (1) Change the rule to satisfy the Commission's objection and submit the revised rule to the Commission.
- (2) Submit a written response to the Commission indicating that the Secretary has decided not to change the rule.

(h) Changes. – When the Secretary changes a rule in response to an objection by the Commission, the Commission must determine whether the change satisfies the Commission's objection. If it does, the Commission must approve the rule. If it does not, the Commission must send the Secretary a written statement of the Commission's continued objection and the reason for the continued objection.

(i) Approval. – If the Commission or its designee finds that the rule meets the standards in subsection (e) of this section, the Commission or its designee must approve the rule and deliver the rule to the Codifier of Rules. The Codifier of Rules must enter the rule into the North Carolina Administrative Code upon receipt from the Commission or its designee.

(j) Return of Rule. – A rule to which the Commission has objected remains under review by the Commission until the Secretary decides not to satisfy the Commission's objection and makes a written request to the Commission to return the rule to the Secretary. When the Commission returns a rule to the Secretary in accordance with this section, the Secretary may

1 file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26  
2 of Chapter 1 of the General Statutes.

3 (k) Standing. – A person aggrieved by a rule adopted by the Secretary may file an  
4 action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of  
5 Chapter 1 of the General Statutes. In the action, the court must determine whether the rule  
6 meets the standards in subsection (e) of this section. The court may not grant an ex parte  
7 temporary restraining order. Filing a petition for rule making or a request for a declaratory  
8 ruling with the Secretary is not a prerequisite to filing an action under this subsection. A person  
9 who files an action for declaratory judgment under this subsection must serve a copy of the  
10 complaint on the Secretary, the Codifier of Rules, and the Commission.

11 (l) Effective Date. – G.S. 150B-21.3 does not apply to rule adopted under this section.  
12 A rule adopted under this section becomes effective on the first day of the month following the  
13 month the rule is entered in the North Carolina Administrative Code. "

14 **SECTION 3.** G.S. 150B-1(d)(4) reads as rewritten:

15 "(d) Exemptions from Rule Making. – Article 2A of this Chapter does not apply to the  
16 following:

17 ...

18 (4) The Department of Revenue, with respect to the notice and hearing  
19 requirements contained in Part 2 of Article 2A. With respect to the Secretary  
20 of Revenue's authority to redetermine the State net taxable income of a  
21 corporation under G.S. 105-130.5A, the Department is subject to the  
22 rulemaking requirements of G.S. 105-262A.

23 ...".

24 **SECTION 3.** This act is effective when it becomes law.